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10 UNITED STATES DISTRICT COURT

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12 NORTHERN DISTRICT OF CALIFORNIA-OAKLAND

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LAURA THOMPSON, etc.,

Case No.: C 07 4046 WDB

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Plaintiff,

**[PROPOSED] ORDER GRANTING  
DEFENDANT'S MOTION TO DISMISS  
PURSUANT TO F.R.C.P. 12(b)(6) AND  
TO STRIKE PURSUANT TO F.R.C.P.  
12(F) PORTIONS OF THE  
COMPLAINT.**

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vs.

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HOMECOMINGS FINANCIAL, LLC,

Hearing Date: November 28, 2007

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Time: 1:30 p.m.

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Courtroom: 4

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Judge: Wayne D. Brazil

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Complaint Date: August 7, 2007

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Trial Date: Not Set

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Defendants.

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This Motion of Defendant HOMECOMINGS FINANCIAL, LLC, (hereafter,

“Defendant”), seeking dismissal pursuant to FRCP 12(b)(6) and to strike portions of the

complaint pursuant to FRCP 12(f), having been duly noticed and served on all interested parties,

came on regularly for hearing before this Court, the Honorable Wayne D. Brazil presiding, at

1:30 p.m. on November 28, 2007.

All arguments, papers and evidence considered and good cause appearing, Defendant’s

Motion to Dismiss and to Strike portions of the complaint pursuant to:

1. Fed. R. Civ. P. 12(b)(6) to dismiss the second cause of action due to:
- a. The California Consumers Legal Remedies Act (Civ. Code, §1750 et seq.) does not apply to transactions involving only the extension of credit; and
  - b. Plaintiff has not alleged facts showing a violation of the Consumers Legal Remedies Act's specific prohibitions.
2. Fed. R. Civ. P. 12(f) to strike the complaint's following allegations:
- a. Paragraph 27, the class definition, because it improperly creates a "fail-safe" class, requiring a merits determination to decide class membership.
  - b. Paragraphs 44 and 47 because they seek compensatory and punitive damages and attorney fees, relief that is not available under California Business and Professions Code § 17200 et seq.
  - c. Paragraphs 1 and 5 of the prayer, which seek compensatory and punitive damages, relief that is not available under California Business and Professions Code § 17200 et seq. or §17500 et seq., and which plaintiff cannot recover under the Consumers Legal Remedies Act for the reasons mentioned in the accompanying motion to dismiss.
  - d. Paragraph 4 of the prayer which seeks statutory damages, relief that is not available under California Business and Professions Code §17500 et seq.

is hereby GRANTED.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

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WAYNE D. BRAZIL  
UNITED STATES DISTRICT JUDGE